

COMMITTEE ON FINANCE



August 25, 2004



Mayor Baines called the meeting to order.

The Clerk called the roll.

Present: Aldermen Roy, Gatsas, Guinta, Sysyn, Osborne, Porter, O'Neil, Lopez, Shea, DeVries, Garrity, Smith, Forest

Absent: Alderman Thibault

Resolutions:

“A Resolution authorizing up to Three Million Four Hundred Thousand Dollars (\$3,400,000.) in expenditures from the Special Revenue Reserve Account for costs relating to the acquisition of the so-called JacPac property and further authorizing the mayor to execute related documents to consummate such transaction.”

“Amending the FY2005 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Three Million Four Hundred Thousand Dollars (\$3,400,000) for CIP 613105 “Jac Pac” Acquisition Project.”

“Amending the FY2003 Community Improvement Program, transferring, authorizing and appropriating funds in the amount of Eight Hundred Fifty Thousand Dollars (\$850,000) for CIP 511803 Stadium Construction & Gill Stadium Reconstruction Project.”

On motion of Alderman Forest, duly seconded by Alderman DeVries it was voted to read the Resolutions by title only, and it was so done.

Alderman Shea moved that the Resolutions ought to pass and be enrolled.
Alderman Forest duly seconded the motion.

Alderman Gatsas stated I guess I am going to the special revenue reserve account. I noticed that Mr. Clougherty so graciously asked Ropes & Gray again for their \$400 interpretation of our special reserve account. I guess I would like to

have...where we have Atty. Craig representing us in this transaction if he could read this and give me what his professional opinion is because obviously we look at it and there is emphasis put on the word "may" and according to an English teacher that I spoke to from West High School who will remain anonymous when you interpret that reading the word "may" references or goes back to the word where it says of the annual budget. It is based on the appropriation that they may take the balance of a portion thereof but not that they may do it outside of the annual budget process. What that "may" stands for is the balance of a portion of the balance and has nothing to do with the annual budget. So, as I thought that the proponents of going forward with this motion...I thought they were going to move this to Bills on Second Reading to make that change because all it takes is a simple vote and I think that probably the votes are here to do it but obviously we are just going to look at things and do them otherwise. My understanding was that it took a 2/3 vote to move this and not just a simple majority.

Mayor Baines stated first of all I don't want to speak for Atty. Craig but he is not here to give us legal advice on matters of that nature and I would assume he would defer that.

Alderman Shea stated I think that in looking back and searching my mind I had a very good English teacher, Mrs. Durning, and she said "may" is for permission and "will" is for ability. That is my interpretation. Now it may differ from the English teacher who is over at West High School but that is what I was told.

Alderman Lopez stated maybe Kevin or Tom could tell me in reference to the letter that was written by Ropes & Gray the last paragraph indicates that we might have to have public input on the City's decision to buy Jac Pac because it is a CIP project. Can you shed some light on the last paragraph?

Solicitor Clark responded first of all I didn't write it so I can't shed light on what he met. The way I read his letter he is saying that the proper way to do it or one proper way to do it is by amending your CIP process.

Mayor Baines asked do you support that recommendation.

Solicitor Clark answered yes we agree with it.

Alderman Lopez stated the point that I am making here, though, is in reading it regarding CIP we usually have a public hearing for that budget. Is he indicating that since we are amending the CIP budget we should have a public hearing?

Solicitor Clark responded no he is not. I think what he is referencing is that during the course of the year whenever new things come up that relate to CIP projects

you amend your CIP resolution, which allows public input through the Board process.

Alderman Lopez stated the last comment I will make on it because I know where most people stand is that when this ordinance was so well made we said many times that it took 2/3 and as an Alderman on this Board for five years now, not only this ordinance but the tax rate stabilization fund we were always saying 2/3 and that has been pounded into our heads so much and then you come along with something like this that is not done in the budget process and this is what happens. We start playing with commas and words like “may” and then we get interpretations. I don’t know why we went to Ropes & Gray. It is our ordinance. Why would we go there? It is beyond me. I don’t know what the Finance Officer said to Ropes & Gray when we have an attorney here to give us an interpretation of our own ordinance.

Mr. Clougherty responded I wrote to Rick Manley because he is the one that drafted the proposed ordinance. He was the one who helped us to put together the series of proposals that we had recommended to the Board because as you know we were doing that to enhance our credit rating and to present a good management vision and discipline to the rating agencies and to investors. Rick was the one who did it. If you are going to have somebody give you some information on statutory construction you go to the lawyer who wrote it. You don’t go to an English teacher. So I went to the lawyer who wrote it and I asked him to give me a proposal and to tell me exactly what it meant. This is his interpretation and I provided a copy to the Solicitor and that is his opinion. I called him this afternoon and asked is there any reason why we should not be expending these dollars and is there any other process we should go through and he said absolutely not, this is fine.

Alderman Porter asked why would he refer in any way at all that it might be a way to facilitate public input. Is he recommending that we get public input in the City’s decision to purchase Tyson? Could you clarify that please Kevin? Why would he refer at all to public input?

Mr. Clougherty answered again when I talked to him this afternoon I asked is there any other additional work that we need to do on this and he said no. We were okay in amending the CIP.

Alderman Porter stated I will ask my question again. Why would he refer to something facilitating public input? Why would he even think of putting that in there?

Mr. Clougherty responded again I can't answer that. The bottom line is that you can go ahead.

Alderman Gatsas asked Kevin can you just very slowly read me that last paragraph because I think what it says and I am not an English teacher and maybe we need to get a lawyer that we are not paying \$400 an hour for to interpret our ordinances but it says, "as the funds in the special revenue reserve account are to be used to handle only capital expenditures, the amendment of the City's CIP to recognize the need to use these funds outside of the normal budget process might be one way to facilitate public input in the City's decision to purchase the Jac Pac facility..." So obviously it is saying that using these funds outside of the normal budget process...it is pretty clear for the man who wrote it. He is telling us that we should be using public input and it is not an English teacher who wrote it. I guess we are probably just going and circumventing what we do for the taxpayers. We change things one day when we want to change them and use the taxpayers when we want to use them and not use them when we don't want to use them.

Mayor Baines asked Mr. Clark would you please give guidance to the Board as the Solicitor.

Solicitor Clark responded as I read that last paragraph he is acknowledging that this is not the normal budget process because it is not. He is also saying that you can do it by amending the CIP resolution and that is what he reiterated to the Finance Officer this afternoon.

Alderman Gatsas stated but your Honor I guess it makes it pretty clear that to facilitate public input...nobody wants to recognize that we have not had the opportunity for the public to have any input.

Solicitor Clark responded I don't believe the letter says that you are required to have public input.

Mayor Baines stated again we have a public forum before all of the regular meetings of the Board of Mayor and Aldermen.

Alderman Shea stated one of the things...what is good for the goose is good for the gander here. Let's assume for the sake of discussion that we want to withdrawn \$2.9 million from the reserve account to lower the tax rate. Do we need a vote of 2/3 or can we do it by a simple majority?

Solicitor Clark responded you would need 2/3. That is outside of the purposes listed in the ordinance.

Alderman Shea asked so we would need 2/3.

Mayor Baines answered right you would need 10 votes because it is outside of the original purpose of that ordinance.

Mayor Baines called for a vote. Alderman Gatsas requested a roll call vote. Aldermen Shea, Garrity, Smith, Forest, Roy, Guinta, Sysyn, and O'Neil voted yea. Aldermen DeVries, Gatsas, Osborne, Porter and Lopez voted nay. The motion carried. Note: Aldermen Porter, Lopez and Osborne were in favor of the Resolution for \$850,000 but opposed to the other two Resolutions.

CIP Budget Authorizations:

613105	"Jac Pac" Acquisition Project
511803	Stadium Construction & Gill Stadium Reconstruction - Revision #1

Alderman Garrity moved that the CIP budget authorizations be approved subject to final adoption of all related resolutions. Alderman Shea duly seconded the motion.

Alderman Gatsas stated my understanding and maybe Alderman Smith can help me with this because I know he was a big proponent of the project and he was pretty vocal when we were doing this but my understanding was that this project was completed and we had moved this forward. Why is it coming up at such a late date?

Mr. Clougherty responded the Board did vote to move on it, Alderman, but they didn't amend the CIP at that time so this is a house cleaning measure to amend the CIP.

Alderman Gatsas stated so what you are basically saying is we just put the Gill Stadium project in with a clean up for Jac Pac and that is the way we amended CIP.

Mr. Clougherty responded what we are saying is once we got the opinion back from Bond Counsel we went back and looked at all of the other transactions and there was only one and we were coming forward to make sure that was consistent.

Alderman Gatsas stated I guess I need an answer and it is either yes or no. Did we amend CIP this evening to include the Jac Pac so we could do our transaction?

Mayor Baines answered yes. Mayor Baines called for a vote. The motion carried with Aldermen Porter, Lopez, and Osborne being duly recorded as opposed to the budget authorization related to Jac Pac.

There being no further business, on motion of Alderman Garrity, duly seconded by Alderman Forest it was voted to adjourn.

A True Record. Attest.

City Clerk